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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,575	09/05/2006	Steven Andrew Skelton	KRB-0229US	7478
22204	7590	11/10/2008	EXAMINER	
NIXON PEABODY, LLP			KIRSCH, ANDREW THOMAS	
401 9TH STREET, NW				
SUITE 900			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20004-2128			4159	
			MAIL DATE	DELIVERY MODE
			11/10/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/577,575	SKELTON ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	ANDREW T. KIRSCH	4159

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-10 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 1-10 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 27 April 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date <u>4/27/2006</u> .	6) <input type="checkbox"/> Other: _____ .

**DETAILED ACTION**

1. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p) (4) because reference character “48” has been used to designate both the frangible bridges and internal thread of the outside part. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

3. The disclosure is objected to because of the following informalities: page 6 discloses a "container 120" which is not labeled in the drawings, and page 7 discloses a "crimped-in region 158" on Fig. 6, which is not labeled in the drawings.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

6. MPEP 2164.01 establishes the analysis required to determine whether the filed disclosure contains sufficient information regarding the subject matter of the claims as to one skilled in the art to make and use the claimed invention without undue experimentation. The factors to be considered to determine whether any necessary experimentation is undue, also known as The Wand factors, see *In re Wands*, 858 F. 2d 737, 8 USPQ2d 1400, 1404 (Fed. Cir. 1988) include, but are not limited to:

Art Unit: 4159

- (A) The breadth of the claims;
- (B) The nature of the invention;
- (C) The state of the prior art;
- (D) The level of one of ordinary skill;
- (E) The level of predictability in the art;
- (F) The amount of direction provided by the inventor;
- (G) The existence of working examples; and
- (H) The quantity of experimentation needed to make or use the invention based on the content of the disclosure.

After analyzing the application with the above factors, the examiner concluded that there is no enabling disclosure of the second portion (30) being movable relative to the inner part (35) from a first position in which the outer part (45) is immediately adjacent the second portion (30) to a second position in which there is an unobstructed gap (G) therebetween (as read in claim 1, lines 4-6). While the drawings show a first portion (25) including inner (35) and outer (45) parts, and a second portion (30), it is not clear from the specification nor the drawings how the second portion is movable between the two claimed positions. Neither the drawings nor the specification teach the claimed motion and two positions. Additionally, on page 5, lines 23-25 of the specification, the applicant has supplied contradictory evidence to the behavior of the second portion, stating that it is prevented from moving by the flaps (31) and that the second portion remains in position during the upwards movement of the outer part (45). Is the second portion mobile as claimed, and in what manner does it move? Is the second portion

stationary as disclosed by not claimed? Therefore the amount of direction provided by the inventor does not enable one of ordinary skill in the art to make or use the invention without undue experimentation.

7. Normally a claim which fails to comply with the first and/or second paragraph of §112 will not be analyzed as to whether it is patentable over the prior art since to do so would of necessity require speculation with regard to the meets and bounds of the claimed subject matter, **In re Steele**, 308 F.2d 859, 862-63, 134 USPQ 292, (CCPA 1962) and **In re Wilson**, 424 F.2d 1382, 1385, 496 USPQ 494, 496 (CCPA 1970).

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention based on the above rejection. The claim language of "a second portion, is movable relative to the inner part" renders the claim indefinite because it contradicts the disclosed behavior of the structure in the specification. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by UK Patent Application GB 2158424 (Guala hereinafter) published 13 Nov 1985.

12. In re claim 9, with reference to Figs. 7-10 below, Guala discloses: In combination a container (2) and a tamper-evident closure (1), the closure comprising: a first portion (6, 18, 20, 39) including inner (6) and outer parts (18, 20, 39), and a second portion (30), the second portion (30) is connected to the container (2) and the first portion (6, 18, 20, 39) is a removable (page 2, lines 87-88) top cap (page 1, lines 111-112), the first portion outer part (18, 20, 39) is movable relative to the inner part (6) (see Figs. 8 and 9) from a first position in which the outer part (18, 20, 39) is immediately adjacent the second portion (30) (see Fig. 8) (page 3, lines 34-35) to a second position in which there is an empty, unobstructed gap (see Fig. 9) therebetween, thereafter the first portion (6, 18, 20, 39) is removable (page 2, lines 87-88) and the inner (6) and outer parts (18, 20, 39) are adapted to become irreversibly locked in the second position so that the outer part (18, 20, 39) cannot be moved back to the first position to close the gap when the first portion (6, 18, 20, 39) is replaced (page 3, lines 51-54).

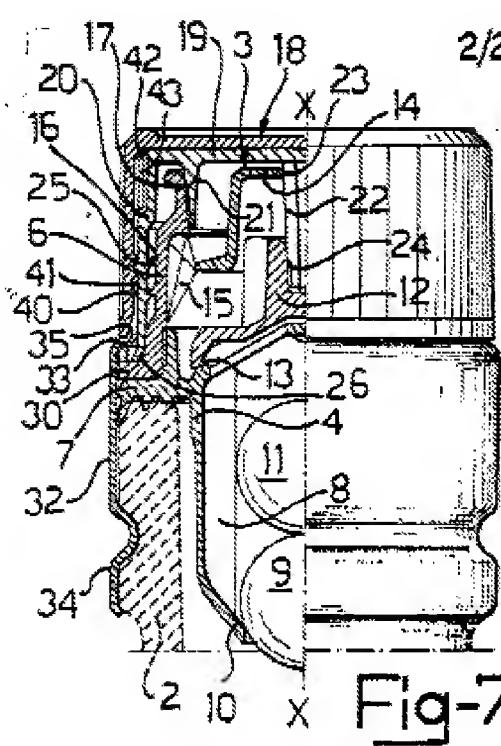
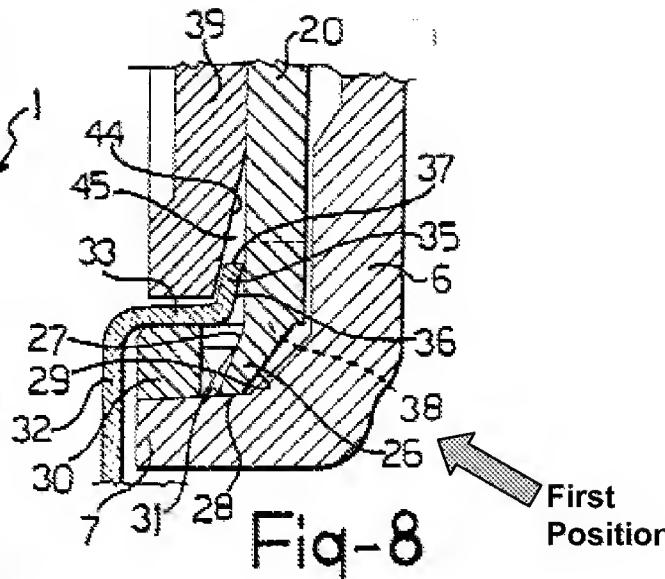


Fig-7



**Fig-8**

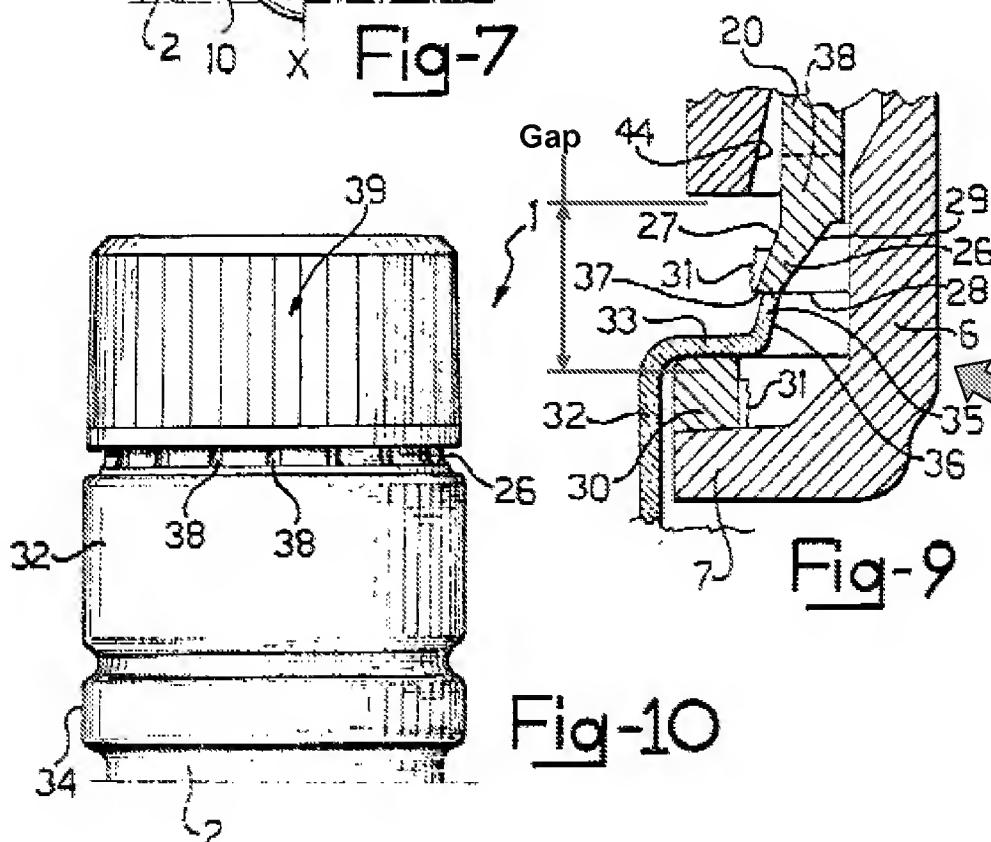
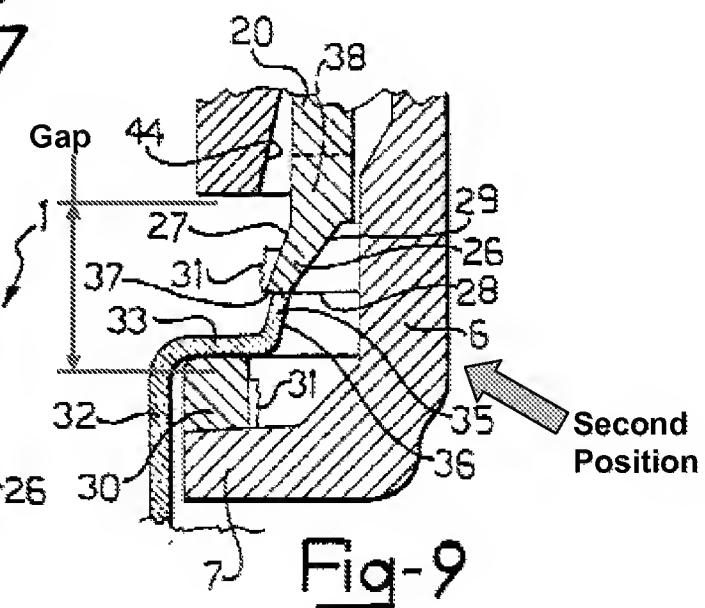


Fig-10



## Second Position

**Fig-9**

## Figs. 7-10 of UK Patent Application GB 2158424 (Guala hereinafter)

13. Note that pourer (6) of Guala (analogous to applicants inner part) is considered part of the security closure (page 1, lines 38-39). Also note that the pourer is inherently removable by virtue of only being press-fitted onto the closure (page 1, lines 87-88). Also note that the gap in Fig. 10 is unobstructed because there are apertures (38) located at the free end of the skirt (20) (page 2, lines 27-29).

14. In re claim 10, with reference to Figs. 7-10 above, Guala discloses the claimed invention, including wherein the combination further comprises an in-bore fitment (3) connectable to the container (page 1, lines 82-86), the first portion (6, 18, 20, 39) being adapted to engage the fitment (page 1, lines 87-88).

### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 5,819,965 to King et al. discloses a tamper evident ring for a container closure. U.S. Patent No. 3,871,545 to Bereziat discloses closure devices for containers. U.S. Patent No. 5,332,113 to Kusler, III et al. discloses a two piece cap assembly. U.S. Patent No. 4,091,949 to Fowles et al. discloses an antibackoff threaded ring closure using ratchet means.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW T. KIRSCH whose telephone number is (571)270-5723. The examiner can normally be reached on M-F, 8am-5pm, off alt. Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Nguyen can be reached on 571-272-4491. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Quang T Van/  
Primary Examiner, Art Unit 3742

/Andrew T. Kirsch/  
Examiner, Art Unit 4159